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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/978,132	10/16/2001	Steven Curtis Zicker	IR 6562-02	3795

23909 7590 03/11/2004

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EXAMINER

SPIVACK, PHYLLIS G

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 03/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/978,132

Applicant(s)

ZICKER ET AL.

Examiner

Phyllis G. Spivack

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-22, 26 and 28-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-22, 26, 28-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____

- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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Applicants' Reply under 37 CFR 1.111 filed September 22, 2003, Paper No. 18, is acknowledged. Claims 12-22, 26 and 28-31 remain in the case.

In the last Office Action claims 12-22, 26 and 28-31 were rejected under 35 U.S.C. 103 as being unpatentable over Hamilton, N.D., U.S. Patent 6,335,361. It was asserted Hamilton teaches the administration of pet food formulations comprising α -lipoic acid, l-carnitine and vitamins C and E to improve mental acuity and to treat cognition disorders associated with aging.

Applicants argue, except for the single two sentence paragraph appearing at column 10, lines 9-13, which mentions *inter alia* dogs and cats, there is no indication carnitine and lipoic acid should be provided to any mammal other than aged humans. Further, Applicants urge the Hamilton disclosure only leads to the administration to aged people the materials of his invention for reasons which are not adequately disclosed for dogs and cats and which do not suggest the use of vitamin E or C to obtain any effect other than their already known use as a nutrient.

Applicants' arguments have been given careful consideration but are not found persuasive. The rejection of record is repeated for the reasons of record.

The specific antioxidants recited in claims 30 and 31 are well established in the prior art as effective in slowing down the aging process both prior to old age and during old age. Prior art references that are cited below teach the role of the specific antioxidants vitamin C, vitamin E, α -lipoic acid and l-carnitine to inhibit the onset of deterioration of mental capacity, increase mental capacity to resist oxidative damage, inhibit the loss of learning ability and to increase the learning ability in both adult and

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aged companion pets. The references are provided for background information only and are not applied as part of a rejection. Both mice and rat laboratory models properly serve to illustrate efficacy in dogs and cats. It is noted claims 12, 26 and 28-31 are not limited to dogs and cats.

The citations directed both to animals and vitamins C and E in column 10 of Hamilton clearly, and respectively, encompass the mammals of the present invention and known antioxidants. Claims 12 and 26 broadly recite "an antioxidant" or mixtures. The open language of the present claims does not preclude the addition of any number of active ingredients. Further, Applicants' indications of age ranges for adult and aged animals would reasonably vary with respect to animal type and breed.

In the last Office Action the rejection of claims 12, 13 and 26 under 35 U.S.C. 102(a) as being anticipated by Milgram et al., Internet site, was maintained. Milgram teaches the administration of a broad spectrum of antioxidants to improve learning in aged dogs.

Applicants argue the citation of Milgram relates to dosing aged dogs and the addition of the limitation of claim 14 with respect to age would be considered as an amendment to claims 12 and 26.

There are no amendments of record in Paper No. 18. As stated supra, age ranges for adult and aged animals varies with respect to type and breed of the animal. Both young and aged dogs are encompassed in the teaching.

The rejection of record under 35 U.S.C. 102(a) is maintained.

No claim is allowed.

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The following references are provided as state of the art: Emmons, B., South Bend Tribune, South Bend, Ind., August 25, 1999. Emmons discloses antioxidants to slow down the aging process (first page, fourth paragraph of the text). Alpha-lipoic acid is disclosed to enhance the functions of vitamins C and E; Crayhon, R., Total Health, April/May 1998, 20/2, 27-35. Acetyl-L-carnitine is disclosed as a powerful antioxidant that slows the aging process (page 29, fourth paragraph); Sole et al., U.S. Patent 6,080,788, column 8, lines 5-8 and column 13, lines 36-40; Chemical Abstracts 113: 71127 discloses acetyl-L-carnitine antagonizes the deterioration of the ability of old rats to learn and solve mazes; Chemical Abstracts 120: 45784 discloses alpha-lipoic acid improves the long term memory of aged mice.

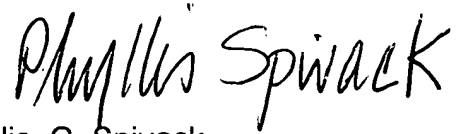
THIS ACTION IS MADE FINAL. Applicants are reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication should be directed to Phyllis G.

Spivack at telephone number 571-272-0585.

A handwritten signature in black ink that reads "Phyllis Spivack". The signature is written in a cursive, flowing style.

Phyllis G. Spivack
Primary Examiner
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February 6, 2004

**PHYLLIS SPIVACK
PRIMARY EXAMINER**